

Remarks

Applicants received a Notice of Non-Compliant Amendment mailed 12/31/03. Applicants respectfully submit that the previously submitted amendment complied with the new rules. A phone message was left for Examiner Jackson on this issue but the call was not returned. However, applicants submit this amendment and respectfully submit that the informal objections are moot. Applicants reserve the right to request additional term in light of the delay.

Claims 12, 17 and 24 were indicated as being allowable. The Examiner is respectfully thanked for the indication of allowable subject matter in this case. These claims have been placed in independent form and are believed to be in condition for allowance.

The Office Action rejected claims 5-11, 13-16 and 18-23 under 35 U.S.C. Section 102(e) as being anticipated by Sohn et al., U.S. Pat. No. 5,988,171.

The Office Action stated, "Applicant's claim for priority is recognized, however, the 5,972,000 patent filed October 1999 has the earliest date with the claimed invention." Notably, the '000 patent was filed on October 18, 1996. This is prior to the filing date of the '171 patent (June 26, 1997). The Office Action went on to state, "Therefore, Sohn et al. filed June 1997 is considered prior art to the claims." Applicants respectfully disagree and note that if the present application is entitled to the filing date of the '000 patent, then the '171 patent is not prior art.

The Office Action stated:

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

In the present case, the '171 patent is not a patent that results "directly or indirectly from an international application filed before November 29, 2000." Thus, this sentence in the Office Action is confusing and does not support a rejection based on the '171 patent. The Office Action goes on to state:

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102 (e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

We respectfully disagree. The "effective date" of the American Inventors Protection Act is *November 29, 1999* (P.L. 106-113). Section 4807 (b) of P.L. 106-113 is triggered by the filing of a new patent application:

(b) EFFECTIVE DATE-The amendment made by this section shall apply to any application for patent filed on or after the date of the enactment of this Act.

The filing date of the present application is December 27, 2001 which is well "after the date of the enactment of this Act (Nov. 29, 1999)." Thus, it is not appropriate to apply the pre AIPA definition of prior art under 102(e) in this case.

In summary, because the rejection based on the '171 is not appropriate, the rejection should be withdrawn. Applicants expressly reserve the right to distinguish the disclosure of the '171 patent from the present invention.. Since the rejection based on the '171 patent is not justified, applicants do not address the differences between the present invention and the '171 patent at this time.

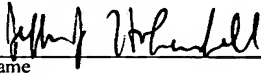
Examination and reconsideration of the application in light of this response is requested.

If the Examiner comes to believe that a telephone conversation may be useful in addressing any remaining open issues in this case, the Examiner is invited to contact the undersigned attorney at 952-930-6135.

Three additional independent claims are added by this amendment. Please charge the fee for these additional independent claims to deposit account no. 501921. If any additional fee is required for the timely submission of this response, applicants request that such fee be charged to deposit account no. 501921.

Registration Number	Telephone Number
34,109	(952) 930-6135
Date	
January 28, 2004	

Respectfully submitted,

Signature

Printed Name
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